

171. *Discussion.* An incumbent LEC seeking pricing flexibility for special access or dedicated transport services under the framework we adopt in this Order may file a petition with the Commission identifying the relief it seeks and demonstrating that it has satisfied the applicable triggers. Comments on petitions will be due fifteen days after the petition is filed. Replies will be due ten days after the comments are due. The triggers established for special access and dedicated transport services are administratively simple and easy to verify. A relatively short pleading cycle is, therefore, sufficient to enable interested parties to examine the incumbent LEC's petition and to draft a response. We will notify interested parties of a pending pricing flexibility petition through the Competitive Pricing Division's Tariff Public Reference Log. In addition, we require incumbent LECs to submit pricing flexibility petitions through our Electronic Tariff Filing System (ETFS), so that interested parties may obtain copies of petitions through the Commission's website.

172. Incumbent LECs bear the burden of proving that they have satisfied the applicable trigger for the pricing flexibility they seek.⁴²⁵ An incumbent LEC is in the best position to present evidence of the extent of collocation in its wire centers within an MSA. We also adopt Ameritech's proposal to permit incumbent LECs to file petitions for multiple MSAs, as long as the data in those petitions are disaggregated by MSA.⁴²⁶ Specifically, to carry its burden of proof, the incumbent may show the following: (1) the total number of wire centers in the MSA; (2) the number and location of the wire centers in which competitors have collocated; (3) in each wire center on which the incumbent bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the incumbent to transport traffic from that wire center; and (4) that the percentage of wire centers in which competitors have collocated satisfies the trigger we have adopted with respect to the pricing flexibility sought by the incumbent LEC. Alternatively, the incumbent may show the following: (1) the total base period⁴²⁷ revenues generated by the services for which the incumbent seeks relief in the MSA for which the incumbent seeks relief; (2) in each wire center on which the incumbent bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the incumbent to transport traffic from that wire center; and (3) that the wire centers in which competitors have collocated account for a sufficient percentage of the incumbent's base period revenues generated by the services at issue within the relevant MSA or non-MSA area to satisfy the trigger we have adopted with respect to the pricing flexibility sought by the incumbent LEC. We codify these requirements in a new Section 1.774 of our rules, as set forth in Appendix B to this Order.

⁴²⁵ See Spectranet Comments at 5-6.

⁴²⁶ Ameritech Oct. 26 Comments, Att. N at 3, 5.

⁴²⁷ For price cap LECs, the "base period" is the 12-month period (*i.e.*, the calendar year) ending six months before the effective date of the LECs' annual access tariffs. See 47 C.F.R. § 61.3(e).

173. Currently, the Commission's new service rules require price cap LECs to determine the appropriate price cap basket and service band for their new services in the context of a subsequent annual access tariff filing, and to incorporate those new services into those baskets in that annual access filing.⁴²⁸ Whenever a price cap LEC can demonstrate in an annual access tariff filing that one of its new services would be properly incorporated into a basket or service band for which it has been granted Phase I or Phase II regulatory relief in any MSA or MSAs, it will be granted the same relief in the same MSAs for that new service.

174. We also amend Section 0.291, listing the authority delegated to the Chief, Common Carrier Bureau (Bureau), explicitly to delegate authority to issue Orders acting on petitions for pricing flexibility involving special access and dedicated transport services. Because the pricing flexibility triggers we adopt for those services are administratively simple bright-line tests, Bureau-level review is sufficient to determine whether the incumbent LEC has satisfied the applicable test.

175. Finally, a pricing flexibility petition for special access and dedicated transport services will be deemed granted unless the Bureau denies it within 90 days of the close of the pleading cycle, as the Commission proposed in the *Access Reform NPRM*.⁴²⁹ Ameritech recommends adopting a deadline of 90 days after the filing date of the petition, rather than 90 days after the close of the pleading cycle.⁴³⁰ Although we expect our pricing flexibility thresholds to be simple to administer, it is prudent to allow more time to review pricing flexibility petitions, at least until we gain more experience. The Bureau may, of course, issue an Order before this 90-day deadline if it has completed the review. Also, if experience shows that a full 90 days is not necessary to review pricing flexibility petitions, we may consider relaxing this or other procedural requirements. The period for filing applications for review begins the day the Bureau grants or denies the petition, or the day that the petition is deemed denied.

2. Treatment of Proprietary Data

176. In the event that a price cap LEC wishes to request confidential treatment of any information contained in a pricing flexibility petition, it should follow the procedures for obtaining confidential treatment of tariff cost support information. The price cap LEC must demonstrate, by a preponderance of the evidence, that the information should be withheld from public inspection in accordance with the requirements of Section 0.459 of the

⁴²⁸ Specifically, price cap LECs are required to incorporate new services into a price cap basket in the annual access tariff filing effective between 6 and 18 months after the new service tariff takes effect. 47 C.F.R. § 61.42(g).

⁴²⁹ *Access Reform NPRM*, 11 FCC Rcd at 21431.

⁴³⁰ Ameritech Comments, Attachment N at 3, 5.

Commission's rules.⁴³¹ A price cap LEC wishing to request confidential treatment of information contained in a pricing flexibility petition should demonstrate, by a preponderance of the evidence, that the information should be withheld from public inspection in accordance with the requirements of Section 0.459 of this chapter.

177. In their requests for confidentiality, carriers should indicate with specificity the extent to which they believe the information they submit, such as the identity of collocators, is subject to section 222(b) of the Act concerning confidential carrier information,⁴³² and the bases for that belief. The information will be kept confidential, as appropriate, subject to Commission procedures concerning Freedom of Information Act (FOIA) requests. Although the Commission will consider any FOIA requests on a case-by-case basis, pursuant to applicable law, we note that FOIA exceptions, such as the exception for "trade secrets and commercial or financial information,"⁴³³ may prevent disclosure of such information. A price cap LEC will be required, in any event: (1) to provide collocation information to parties to the extent that the parties are the collocators upon which the price cap LEC relies in its petition, (2) to certify in its petition that it has done so, and (3) to provide to the Commission a copy of the information it provides to those parties. In such cases, the LEC may provide the data to a party in redacted form, revealing to the party only the information relating to that party.

3. Other Switched Access Services

178. We will grant Phase I pricing flexibility for common line and traffic-sensitive services, and the traffic-sensitive components of tandem-switched transport service to a price cap LEC within an MSA if the LEC demonstrates that its competitors, in aggregate, offer service over their own facilities to at least 15 percent of incumbent LEC customer locations in the MSA. For the reasons we explain in Section VI.C.3, we do not prescribe a particular method by which a LEC may demonstrate satisfaction of this trigger. As a result, petitions seeking pricing flexibility for these services will not be as routine as petitions seeking pricing flexibility for special access and dedicated transport services. Because pricing flexibility petitions for common line, traffic-sensitive, and the traffic-sensitive components of tandem-switched transport services are not subject to a bright-line rule, and will require more fact-intensive investigation, they are best addressed at the Commission level. Accordingly, we do not delegate authority to the Bureau at this time to act on petitions for pricing flexibility involving these services. A pricing flexibility petition for these services will be deemed

⁴³¹ See 47 C.F.R. §§ 0.459. See also Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, CC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24840-42 (1998) (*Treatment of Confidential Information Order*); *Tariff Streamlining Order*, 12 FCC Rcd at 2212-14.

⁴³² See 47 U.S.C. § 222(b).

⁴³³ See 5 U.S.C. § 552(b)(4).

granted unless the Commission denies it within five months of the close of the pleading cycle for that petition. Otherwise, we adopt the same procedural requirements for pricing flexibility petitions for these services as we adopt above for pricing flexibility petitions for special access and dedicated transport services. As the Commission gains experience with such petitions, it may be possible for the Commission to act in less than the full five months, or to delegate authority to the Bureau with respect to these petitions.

F. U S West Forbearance Petition

179. As we note above, several BOCs have filed petitions seeking forbearance, pursuant to section 160 of the Act,⁴³⁴ from dominant carrier regulation in the provision of certain special access and high capacity services.⁴³⁵ The first of these petitions, filed by U S West, is deemed granted if not denied by the Commission by August 24, 1999, unless the Commission extends the deadline for an additional ninety days.⁴³⁶ We conclude that such an extension is warranted here. In this Order, we adopt a comprehensive framework for granting price cap LECs such as U S West progressively greater pricing flexibility as competition develops, including much of the relief sought by U S West in its petition, and an extension of the deadline for acting on that petition will allow the Commission to consider U S West's request for relief in the context of the rules we adopt here. Accordingly, we extend the deadline for acting on U S West's petition by ninety days.

VII. CLEC ACCESS CHARGES

A. Background

180. In the *Competitive Carrier Proceeding*, the Commission established a comprehensive framework for determining whether carriers are dominant or non-dominant.⁴³⁷ Dominant carriers⁴³⁸ are carriers that possess individual market power and those without

⁴³⁴ 47 U.S.C. § 160.

⁴³⁵ See *supra* Section II.C.1.

⁴³⁶ See Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket No. 98-157 (filed Aug. 24, 1998); 47 U.S.C. § 160(c) (imposing one-year deadline for Commission action on forbearance petition; Commission may extend the deadline by 90 days if necessary to ensure compliance with the statutory forbearance criteria).

⁴³⁷ *Dominant/Non-Dominant Order*, 12 FCC Rcd 15766.

⁴³⁸ *Competitive Carrier First Report and Order*, 85 FCC 2d at 20-22; see also 47 C.F.R. § 61.3(o) (defining "dominant carrier").

market power are non-dominant carriers.⁴³⁹ The Commission's policy since *Competitive Carrier* is that a carrier is non-dominant unless the Commission makes or has made a finding that it is dominant.⁴⁴⁰ New entrants into the exchange access market, such as competitive local exchange carriers (CLECs),⁴⁴¹ have been presumptively classified as non-dominant because the Commission has not found that they are able to exercise market power in particular service areas.⁴⁴² To date, the Commission has applied Parts 61 (Tariffs) and 69 (Access Charges) of its rules only to incumbent LECs.⁴⁴³

181. In the *Access Reform NPRM*, the Commission sought comment on whether CLECs have market power with regard to terminating access services and whether and to what extent it should regulate terminating access services provided by CLECs.⁴⁴⁴ The Commission noted that, with originating access, the calling party has the choice of service provider, the decision to place a call, and the ultimate obligation to pay for the call.⁴⁴⁵ The calling party is also the customer of the IXC that purchases the originating access service.⁴⁴⁶ As long as IXCs can influence the choice of the access provider, a LEC's ability to charge

⁴³⁹ The Commission, in the *Dominant/Non-Dominant Order*, listed a number of factors that historically have been considered in determining whether a firm possesses market power, including market share, supply and demand substitutability, the cost structure, size, and resources of the firm, and control of bottleneck facilities. See *Dominant/Non-Dominant Order*, 12 FCC Rcd at 15766. See also Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934 and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 94-149, Notice of Proposed Rulemaking, 11 FCC Rcd 18877, at 18929-38 (1996).

⁴⁴⁰ See, e.g., *Competitive Carrier First Report and Order*, 85 FCC 2d at 10-11; 47 C.F.R. § 61.3(u) (defining "non-dominant carrier").

⁴⁴¹ CLECs compete with incumbent LECs in the provision of local exchange and exchange access services.

⁴⁴² See Tariff Filing Requirements for Non-Dominant Common Carriers, CC Docket No. 93-36, Memorandum Opinion and Order, 8 FCC Rcd 6752, 6754 (1993) (CLECs are non-dominant carriers because they have not been previously declared dominant), *vacated and remanded in part on other grounds*, *Southwestern Bell Corp. v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995); *on remand*, 10 FCC Rcd 13653 (1995).

⁴⁴³ See *Hyperion Telecommunications, Inc.*, Petition for Forbearance, Memorandum Opinion and Order, 12 FCC Rcd 8596 (1997) (granting petitions seeking permissive detariffing for provision of interstate exchange access services by providers other than the incumbent LEC) (*Hyperion Order*). Concomitantly with the *Hyperion Order*, the Commission issued a Notice of Proposed Rulemaking seeking comment on mandatory detariffing for non-incumbent LEC providers of interstate exchange access services. See Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers, CC Docket No. 97-146, Notice of Proposed Rulemaking, 12 FCC Rcd 8613 (1997).

⁴⁴⁴ *Access Reform NPRM*, 11 FCC Rcd at 21476.

⁴⁴⁵ *Id.* at 21472.

⁴⁴⁶ *Id.*

excessive originating access rates is limited, as IXC's will shift their traffic from that carrier to a competing access provider.⁴⁴⁷ The Commission noted that, with terminating access, the choice of service provider for terminating access is made by the called party.⁴⁴⁸ The decision to place the call and payment for the call lies, however, with the calling party. The calling party, or its long-distance service provider, has little or no ability to influence the called party's choice of service provider.⁴⁴⁹ Furthermore, IXC's are required by statute to charge averaged rates.⁴⁵⁰ Consequently, not only does the calling party not choose the terminating LEC, but section 254(g) requires IXC's to spread the cost of terminating access rates among all end users. Because the paying party does not choose the carrier that terminates its interstate calls, CLEC's may have incentive to charge excessive rates for terminating access.⁴⁵¹ Accordingly, the Commission tentatively concluded in the *Access Reform NPRM* that terminating access may remain a bottleneck controlled by whichever LEC provides terminating access to a particular customer, even if competitors have entered the market.⁴⁵² The Commission also recognized, however, that excessive terminating access charges might encourage IXC's to enter the access market in order to avoid paying these charges.⁴⁵³

182. In the *Access Reform NPRM*, the Commission also sought comment on whether it should continue to treat incumbent LEC originating "open end" minutes, such as originating access for 800 service, as terminating minutes for access charge purposes, and whether it should extend this approach to CLEC's.⁴⁵⁴ The Commission noted that, in some cases, such as

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.* at 21476.

⁴⁴⁹ *Id.*

⁴⁵⁰ See 47 U.S.C. § 254(g); see also Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564 (1996) (requiring IXC's to integrate and average the rates they charge for service).

⁴⁵¹ *Access Reform NPRM*, 11 FCC Rcd at 21476 (citing JOSEPH GILLAN & PETER ROHRBACH, THE POTENTIAL IMPACT OF LOCAL COMPETITION ON TELECOMMUNICATIONS MARKET STRUCTURE: DIVERSITY OR RECONCENTRATION, 1994; ROBERT W. CRANDALL AND LEONARD WAVERMAN, TALK IS CHEAP: THE PROMISE OF REGULATORY REFORM IN NORTH AMERICAN TELECOMMUNICATIONS, 1996, at 265-265).

⁴⁵² *Access Reform NPRM*, 11 FCC Rcd at 21476.

⁴⁵³ *Id.* at 21473.

⁴⁵⁴ See *id.* at 21477. "The term open end of a call describes the origination or termination of a call that utilizes exchange carrier common line plant (a call can have no, one, or two open ends.)" 47 C.F.R. § 69.105(b)(1)(ii).

800 and 888 service, the called party, which pays for the call, is unable to influence the calling party's choice of provider for originating access services.⁴⁵⁵

183. In the *Access Reform First Report and Order*, the Commission decided not to adopt any regulations governing CLEC terminating access charges and did not address the issue of CLEC originating access charges.⁴⁵⁶ Based on the available record, the Commission decided to continue to treat non-incumbent LECs as non-dominant in the provision of terminating access service.⁴⁵⁷ Although an IXC must use the CLEC serving an end user to terminate a call, the Commission found that the record did not indicate that CLECs previously had charged excessive terminating access rates or that CLECs distinguished between originating and terminating access in their service offerings.⁴⁵⁸ The Commission concluded that it did not appear that CLECs had structured their service offerings in ways designed to exercise any market power over terminating access and that, therefore, the concerns expressed in the *Access Reform NPRM* were not substantiated by the record.

184. The Commission further observed that, as CLECs attempt to expand their market presence, the rates of incumbent LECs or other potential competitors should constrain the CLECs' terminating access rates.⁴⁵⁹ In addition, the Commission found that overcharges for terminating access could encourage access customers to take competitive steps to avoid paying unreasonable terminating access charges.⁴⁶⁰ The Commission explained that, although high terminating access charges may not create a *disincentive* for the call recipient to retain its local carrier (because the call recipient does not pay the long distance charge), the call recipient may nevertheless respond to *incentives* offered by an IXC with an economic interest in encouraging the end user to switch to another local carrier.⁴⁶¹ Thus, the Commission

⁴⁵⁵ See *Access Reform NPRM*, 11 FCC Rcd at 21477.

⁴⁵⁶ With respect to incumbent LEC originating access charges, the Commission concluded that new entrants, by purchasing unbundled network elements or providing facilities-based competition, eventually will exert downward pressure on incumbent LEC originating access rates. *Access Reform First Report and Order*, 12 FCC Rcd at 16135-36.

⁴⁵⁷ *Access Reform First Report and Order*, 12 FCC Rcd at 16140.

⁴⁵⁸ *Id.* The Commission noted, in fact, that the record indicated that the terminating rates of CLECs were equal to or below the tariffed rates of incumbent LECs. *Id.*

⁴⁵⁹ The Commission stated that the record indicated that long-distance carriers have established relationships with incumbent LECs for the provision of access services, and new market entrants are not likely to risk damaging their developing relationships with IXCs by charging unreasonable terminating access rates. *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.* at 16141.

concluded that the possibility of competitive responses by IXC's would constrain non-incumbent LEC pricing.⁴⁶²

185. Although the Commission declined at that time to adopt any regulations governing the provision of terminating access provided by CLECs because CLECs did not appear to possess market power,⁴⁶³ it noted that it could address the reasonableness of CLEC terminating access rates in individual instances through the exercise of its authority to investigate and adjudicate complaints under section 208.⁴⁶⁴ Moreover, the Commission stated that it would be sensitive to indications that the terminating access rates of CLECs were unreasonable.⁴⁶⁵ The Commission committed to revisit the issue of CLEC access rates if there were sufficient indications that CLECs were imposing unreasonable terminating access charges.⁴⁶⁶

B. AT&T's Petition for Declaratory Ruling

186. On October 23, 1998, AT&T filed a petition requesting that the Commission issue a declaratory ruling⁴⁶⁷ confirming that, under existing law and Commission rules and policies, IXC's may elect not to purchase switched access services offered under tariff by CLECs.⁴⁶⁸ AT&T contends that a substantial number of CLECs impose switched access charges that are significantly higher -- in some cases, by more than twenty times -- than those

⁴⁶² *Id.* at 16142. The Commission also decided to continue to treat "open end" originating minutes, such as those for 800 or 888 services, as terminating minutes for access charge purposes, recognizing, in these cases, that access customers have limited ability to influence the calling party's choice of access provider. *Id.* In order to address the potential that incumbent LECs might charge unreasonable rates for terminating access, the Commission limited price cap incumbent LEC recovery of TIC and common costs from terminating access rates for a limited period with the eventual elimination of any recovery of common line and TIC costs through terminating access charges. *Id.* at 16137.

⁴⁶³ *Id.* at 16141.

⁴⁶⁴ 47 U.S.C. § 208.

⁴⁶⁵ *Access Reform First Report and Order*, 12 FCC Rcd at 16141-42. The Commission indicated that terminating access rates that exceed originating rates in the same market, for example, may suggest the need to revisit its regulatory approach. Similarly, the Commission noted that terminating rates that exceed those charged by the incumbent LEC serving the same market may suggest that a CLEC's terminating access rates are excessive. *Id.* at 16142.

⁴⁶⁶ *Id.*

⁴⁶⁷ See 47 C.F.R. § 1.2.

⁴⁶⁸ See *AT&T Declaratory Ruling Petition*. We note that, unless otherwise indicated, all citations to comments and replies in this section of the Order refer to comments and replies submitted in response to the *AT&T Declaratory Ruling Petition*.

charged by the incumbent LEC against which the CLEC competes.⁴⁶⁹ AT&T's attempts to negotiate a resolution of this issue have stalled, it says, because many CLECs take the position that, due to the "filed tariff doctrine,"⁴⁷⁰ AT&T is obligated to accept services from the CLEC at prices chosen by the CLEC, even though AT&T did not affirmatively order access from the CLEC.⁴⁷¹ AT&T alleges that its petition is consistent with the *Access Reform First Report and Order*, in which the Commission stated that "terminating rates that exceed those charged by the ILEC serving the same market may suggest that a CLEC's terminating access rates are excessive."⁴⁷²

187. The Commission has the discretion, on a case-by-case basis, to determine whether it is best to resolve a controversy by the adoption of a general rule or by an individual ad hoc proceeding, such as a declaratory ruling.⁴⁷³ The presence or absence of factual disputes is a significant factor in deciding whether a declaratory ruling is an appropriate method for resolving a controversy.⁴⁷⁴ AT&T contends that a declaratory ruling is

⁴⁶⁹ *AT&T Declaratory Ruling Petition*, Appendix A. We note that this issue is also the subject of the Common Carrier Bureau's (Bureau) decision in *MGC Communications, Inc. v. AT&T Corp.*, File No. EAD 99-002, Memorandum Opinion and Order, DA 99-1395 (Com. Car. Bur. July 16, 1999) (*MGC Communications*).

⁴⁷⁰ In general, the "filed tariff" or "filed rate" doctrine stands for the principle that "the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext . . . Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed." *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 127 (1990) (quoting *Louisville & Nashville R. Co. v. Maxwell*, 237 U.S. 94 (1915)). The filed tariff doctrine is codified at 47 U.S.C. § 203, which requires all common carriers of interstate and foreign telecommunications to file a schedule of their charges, as well as the classifications, practices, and regulations affecting such charges. A carrier may charge only the rates listed in the tariff. 47 U.S.C. § 203(c)(1). The charges, classifications, regulations or practices in the filed tariff may be changed only after notice is given to the Commission and the public. 47 C.F.R. § 203(b)(1). See also *Cincinnati Bell Telephone v. Allent Communication Services*, 17 F.3d 921, n.4 (6th Cir. 1994).

⁴⁷¹ *AT&T Declaratory Ruling Petition* at 3, n.2. AT&T does not typically place access orders, or establish direct connections, with such CLECs. *Id.* Instead, the CLEC establishes an interconnection arrangement with the incumbent LEC serving the area, and it installs trunks to the incumbent LEC's access tandem. *Id.* Calls originated from the CLEC's switch are routed to the incumbent LEC tandem, which then combines them with other traffic destined for AT&T or another IXC's network and routes that traffic to that IXC's POP. *Id.* Terminating traffic from AT&T and other IXCs similarly is routed through the incumbent LEC access tandem to the CLEC. *Id.*

⁴⁷² *Id.* at 9 (citing *Access Reform First Report and Order*, 12 FCC Rcd at 16135-42).

⁴⁷³ See, e.g., *British Caledonian Airways Ltd. v. Civil Aeronautics Board*, 584 F.2d 982, 993 (1978) (the choice made between proceeding by a general rule or by an individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency) (*British Caledonian Airways Ltd.*).

⁴⁷⁴ *American Network, Inc. Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, Memorandum Opinion and Order, 4 FCC Rcd 550, 551 (Com. Car. Bur. 1989), *recon. denied*, 4 FCC Rcd 8797 (Com. Car. Bur. 1989). We note that the factors for determining the propriety of a declaratory ruling are

appropriate here because the "facts are essentially undisputed and the governing law is clear."⁴⁷⁵ Despite AT&T's allegations to the contrary, however, the facts are not undisputed here. A number of carriers assert that AT&T's calculations of CLEC originating and terminating access rates⁴⁷⁶ are either incorrect or misleading.⁴⁷⁷ In response to these assertions, AT&T addressed only one of the concerns raised by commenters.⁴⁷⁸ Without agreement by the parties on the calculation and accuracy of both the incumbent LEC and CLEC rates, it is impossible compare them.⁴⁷⁹ Nor can the Commission evaluate AT&T's claim that its request for declaratory ruling is consistent with the Commission's statements in the *Access Reform First Report and Order* that CLEC terminating access rates that exceed those of the incumbent LEC may be excessive.⁴⁸⁰

188. Moreover, the parties also dispute the applicable law. A number of opponents to AT&T's petition assert that AT&T mistakenly relies upon the *Capital Network* decision, in

different in the context of a court referral under the primary jurisdiction doctrine. See *Texas & Pacific Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426 (1907) (creating "primary jurisdiction" doctrine); *United States v. Western Pacific R.R.*, 352 U.S. 59, 63-70 (1956) (explaining purpose of the doctrine); *Far East Conference v. United States*, 342 U.S. 570, 574 (1952) (same); *MCI Communications Corp. v. AT&T*, 496 F.2d 214, 220-22 (3d Cir. 1974) (applying the doctrine in the telecommunications context)).

⁴⁷⁵ *AT&T Declaratory Ruling Petition* at 5.

⁴⁷⁶ See *id.* at Appendix A.

⁴⁷⁷ See WinStar Comments at 6; Optel Comments at 5; CTSI Comments at 10 (rates attributed to WinStar, Optel, and CTSI, respectively, are incorrect); ALLTEL Comments at 2 and ALTS Comments at 6 (AT&T's rate comparison is misleading because it does not reflect the fact that price cap carriers rates are reduced as a result of the introduction of presubscribed interexchange carrier charge); Teligent, Inc. Comments at 9 (AT&T fails to include an amount for transport in the rates charged by Ameritech, the local incumbent LEC, but does include an amount for transport in Teligent's rates).

⁴⁷⁸ AT&T states that inclusion of the presubscribed interexchange carrier charge (PICC) would not make a material difference to its calculation, but it does not address the carriers' other concerns regarding AT&T's calculations, i.e., that rates were misquoted and did not include incumbent LEC transport charges. See AT&T Reply at 4, n.10, and Appendix B, providing a recomputed comparison including the PICC.

⁴⁷⁹ In its reply, AT&T argues that its petition is not a dispute over rate calculations because it is not limited to CLECs that charge rates exceeding the corresponding ILEC levels, but also applies to CLECs that charge rates that simply mirror incumbent LEC rates. AT&T Reply at 4. AT&T asserts that both rates that exceed and rates that mirror incumbent LEC rates distort the exchange access market by establishing the incumbent LECs' purportedly above-cost charges as a benchmark for CLECs. We do not find this argument convincing. At the heart of either complaint is the fact that AT&T views itself as a captive customer forced to pay excessively high terminating rates. In order to evaluate such a complaint, all parties must agree on the method of calculating the disputed rate, e.g., whether transport fees and PICCs are included. Based on the record, it appears that the parties do not.

⁴⁸⁰ *AT&T Declaratory Ruling Petition* at 9 (citing *Access Reform First Report and Order*, 12 FCC Rcd at 1635-42).

which the Commission found that an attempt to charge a party for a service that the party did not order would constitute an unreasonable practice within the meaning of section 201(b) of the Act, 47 U.S.C. § 201(b).⁴⁸¹ These opponents assert that AT&T failed to address the application of the constructive ordering doctrine, established in *United Artists*.⁴⁸² In *United Artists*, the Commission found that affirmative consent was unnecessary to create a carrier-customer relationship when a carrier is interconnected with other carriers in such a manner that it can expect to receive access services, and when it fails to take reasonable steps to prevent the receipt of access services and does in fact receive such services.⁴⁸³ For all the foregoing reasons, and in the exercise of our discretion, we decline to address AT&T's concerns regarding CLEC access charges through a declaratory ruling.⁴⁸⁴ We therefore deny AT&T's petition.

189. In the *Access Reform First Report and Order*, however, the Commission committed to review the issue of CLEC access charges if there were evidence that CLECs were imposing unreasonable terminating access charges.⁴⁸⁵ The *AT&T Petition for Declaratory Ruling*, the comments provided in support of it,⁴⁸⁶ and the Bureau's recent decision in *MGC Communications*⁴⁸⁷ suggest the need to revisit the issue of CLEC access

⁴⁸¹ *AT&T Declaratory Ruling Petition* at 6-8 (citing *Capital Network Systems, Inc.*, 6 FCC Rcd 5609 (Com. Car. Bur. 1992), *application for review denied*, 7 FCC Rcd 80921 (1992), *aff'd*, *Capital Network Systems, Inc. v. FCC*, 28 F.3d 201 (D.C. Cir. 1994) (*Capital Network*)).

⁴⁸² See TRA Comments at 5; MGC Communications Comments at 13; MCI Comments at 4; Cablevision Lightpath, Inc. and Nextlink, Inc. Comments at 3. See also *United Artists Payphone Corp. v. New York Tel. Co.*, 8 FCC Rcd 5562 (1993) (*United Artists*).

⁴⁸³ *United Artists*, 8 FCC Rcd at 5565-66. See also *Capital Network*, 28 F.3d at 204 (taking notice of the principle of constructive ordering, but finding that the principle does not apply to the billing of incomplete calls).

⁴⁸⁴ See SBC Comments at 6-7 (requesting that the Commission issue a notice of proposed rulemaking for further comment before deciding the matter because the decision may affect other parties and practices). We note that several parties have raised a number of other substantive objections to AT&T's petition that we need not consider because we are denying the petition on procedural grounds. See, e.g., BellSouth Comments at 3; Total Telecommunication Services Comments at 4-10; MGC Communications Comments at 5; CTSI Comments at 2 (AT&T's petition violates the interconnection policies of Telecommunications Act of 1996).

⁴⁸⁵ *Access Reform First Report and Order*, 12 FCC Rcd at 16141-42.

⁴⁸⁶ See *AT&T Declaratory Ruling Petition*; Cable & Wireless Comments at 1; U S West Comments at 1; Sprint Comments at 1.

⁴⁸⁷ *MGC Communications*, File No. EAD 99-002, Memorandum Opinion and Order, DA 99-1395.

rates.⁴⁸⁸ Accordingly, in the accompanying Notice, we initiate a rulemaking to examine CLEC originating and terminating access rates.⁴⁸⁹

VIII. NOTICE OF PROPOSED RULEMAKING

A. Geographic Deaveraging for Switched Access Services

190. In this section, we seek comment on whether to amend our Part 69 rules to permit price cap incumbent LECs to deaverage interstate common line and traffic-sensitive access charges within study areas without a competitive showing. Currently, Section 69.3(e)(7) of our rules requires an incumbent LEC to charges rates for access elements that are averaged across each of its study areas.⁴⁹⁰

191. *Common Line Basket.* In the *Access Reform NPRM*, the Commission requested comment on deaveraging all interstate access rate elements except for the subscriber line charge (SLC) (and the primary interexchange carrier charge (PICC), which did not exist at the time).⁴⁹¹ At that time, however, the Commission proposed to permit deaveraging only upon a showing of the degree to which local markets are open to competition.⁴⁹² We now seek comment on whether to permit incumbent LECs to deaverage common line access elements without a competitive showing. To the extent that parties advocate conditioning deaveraging

⁴⁸⁸ Although we are initiating a rulemaking into the issue of CLEC access charges, we take no position on the reasonableness of these charges at this time. We merely wish to reexamine the issue in light of the arguments filed both in support of and in opposition to the *AT&T Declaratory Ruling Petition*. For example, the comments opposing AT&T's Petition argue that CLECs may have justifiably higher access charges due to their limited geographical scope and scale and their different cost structures.

⁴⁸⁹ See, e.g., *British Caledonian Airways Ltd.*, 584 F.2d at 993.

⁴⁹⁰ 47 C.F.R. § 69.3(e)(7). A study area is a geographical segment of a carrier's telephone operations. Generally, a study area corresponds to a carrier's entire service territory within a state. Thus, carriers operating in more than one state typically have one study area for each state, and carriers operating in a single state typically have a single study area. Carriers perform jurisdictional separations at the study area level. For jurisdictional separations purposes, the Commission adopted a rule freezing study area boundaries effective November 15, 1984. Part 36 of the Commission's Rules, 47 C.F.R., Part 36, Appendix-Glossary, definition of "Study Area." See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325 (Dec. 12, 1984), adopted by the Commission, 50 Fed. Reg. 939 (Jan. 8, 1985). Section 69.123 permits incumbents to deaverage rates for services in the trunking basket except for the transport interconnection charge (TIC). In Section V, *supra*, we grant incumbent LECs greater flexibility to deaverage rates for these services.

⁴⁹¹ *Access Reform NPRM*, 11 FCC Rcd at 21433.

⁴⁹² For further discussion and analysis of this proposal, see Section VI.C.1, *supra*.

upon satisfaction of a competitive showing, we seek comment on the appropriate showing and the procedure by which evidence should be presented and evaluated.⁴⁹³

192. We also seek comment on whether to condition an incumbent LEC's authority to deaverage common line access elements on certain regulatory developments, such as deaveraging of unbundled network elements in accordance with our rules,⁴⁹⁴ or establishment of explicit universal service high cost support mechanisms, and, if so, how. Should we impose these conditions in addition to any competitive showing that we may require? We note that, where unbundled network elements are deaveraged, continuing to require incumbents to charge access rates that are averaged across the study area may foreclose the incumbent LEC from meeting competition from unbundled network elements in low-cost areas. Similarly, an incumbent LEC's averaged rates will be below that LEC's cost in high-cost areas, thus discouraging competitive entry in those areas. We also seek comment on whether incumbent LECs should be required, as opposed to merely permitted, to deaverage certain or all common line access rate elements based on any conditions, such as the deaveraging of unbundled network element rates in a state.

193. Currently, incumbent LECs recover interstate common line costs through the SLC, PICC, and carrier common line charge (CCLC). The SLC and PICC are flat-rated charges that vary by class of customer, e.g., multi-line business, single-line business, primary residential line, and additional residential lines, subject to various caps.⁴⁹⁵ The CCLC is a per-minute charge that does not vary by class of customer.⁴⁹⁶ The SLC is assessed directly on end users while the PICC and CCLC are assessed on IXC's. Incumbent LECs are required to recover their interstate-allocated common line costs first through SLCs (subject to caps), then from P ICCs (again, subject to caps), and finally from the CCLC. As the SLC and P ICC caps rise,⁴⁹⁷ the CCLC gradually decreases and will someday be eliminated.

⁴⁹³ We note that, if we permit incumbent LECs to deaverage common line and/or traffic-sensitive charges, IXC's may face significantly differing access costs within LEC study areas. This may increase pressure on IXC's to deaverage interstate interexchange service rates in a manner that conflicts with section 254(g) of the Act, which requires IXC's to charge subscribers in rural and high cost areas rates no higher than rates charged to subscribers in urban areas and to charge subscribers in each state rates no higher than rates charged in any other state. 47 U.S.C. § 254(g). See also MCI Oct. 26 Comments at 32.

⁴⁹⁴ See 47 C.F.R. § 51.507(f) (requiring states to deaverage UNEs across at least three geographic zones); ALTS Oct. 26 Comments at 9. We recently issued a *sua sponte* stay of Section 51.507(f) that will remain in effect until six months after the Commission issues its order in CC Docket No. 96-45, finalizing and ordering implementation of high-cost universal service support for non-rural local exchange carriers under section 254 of the Act. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC No. 99-86, Stay Order (rel. May 7, 1999).

⁴⁹⁵ 47 C.F.R. §§ 69.152, 69.153.

⁴⁹⁶ 47 C.F.R. § 69.154.

⁴⁹⁷ See 47 C.F.R. §§ 69.152(k), 69.153.

194. Parties supporting the deaveraging of interstate common line access charges should comment on the appropriate means of distributing deaveraged cost recovery among such charges. We request comment on whether any deaveraging of the SLC and PICC should be subject to current caps on those charges. At present, our rules provide that, to the extent the SLC caps on all lines and the PICC ceilings on primary residential and single-line business (SLB) lines prevent recovery of the full common line revenues permitted by our price cap rules, incumbent LECs may recover the shortfall through non-primary residential (NPR) and multi-line business (MLB) PICCs.⁴⁹⁸ Thus, if primary residential and SLB SLCs and PICCs have reached their caps, NPR and MLB PICCs may be funding at least part of this shortfall, *i.e.*, subsidizing residential and SLB PICCs. This subsidy will decrease over time as the caps on the primary-residential and single-line business SLCs rise. To what degree should we condition deaveraging of common line rate elements on developments such as the elimination of the MLB PICC? What constraints, if any, should we place on the means by which certain foregone revenue may be recovered? For example, should we permit deaveraging only within a customer class and for a particular type of charge, *e.g.*, prohibit incumbent LECs from recovering foregone SLC revenue through the CCLC or prohibit incumbent LECs from raising the NPR SLC to fund lower MLB SLCs?

195. Further, we seek comment on the means of recognizing any geographic variation in common line costs, *i.e.*, methods of defining geographic pricing zones. Many states have defined at least three geographic zones for the pricing of unbundled loops pursuant to section 252(d)(1) of the Act.⁴⁹⁹ Universal service reform also may require defining zones to reflect different cost characteristics.⁵⁰⁰ We seek comment on whether geographic pricing zones for common line charges should be based on UNE or universal service zones or, perhaps, trunking basket service zones.⁵⁰¹ Parties are invited to suggest additional bases for

⁴⁹⁸ 47 C.F.R. § 69.153(d).

⁴⁹⁹ See, *e.g.*, Consolidated Petition of AT&T Communications, Inc., and MCI Telecomms. Corp. and Affiliates for Arbitration with Southwestern Bell Tel. Co., Case Nos. TO-97-40 and TO-97-67, at 35-36 (Mo. P.S.C. Dec. 11, 1996); Petition of AT&T Communications, Inc. for Arbitration with GTE Hawaiian Tel. Co., Docket No. 96-0329, Decision No. 15528 at 36 (Haw. P.U.C. Apr. 18, 1997). Section 51.507(f) requires states to create at least three geographic rate zones for unbundled network elements. 47 C.F.R. § 51.507(f). We note that despite the fact that Section 51.507(f) of our rules was ineffective when most states determined whether to deaverage geographically unbundled network element rates, many states, such as those listed here, chose to do so.

⁵⁰⁰ Federal-State Joint Board on Universal Service, CC Docket 96-45, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket No. 97-160, Access Charge Reform, CC Docket No. 96-262, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45 and Fourth Report & Order in CC Docket No. 96-262, 14 FCC Rcd 8078, 8126-30 (1999) (*Universal Service Seventh Report and Order*).

⁵⁰¹ See, *e.g.*, *id.* We relax our rules concerning zone pricing of trunking basket services in Section V, *supra*.

establishing geographic zones. For example, should we require LECs to establish identical geographic pricing zones for all access elements?

196. We seek comment on whether to permit incumbent LECs to define their own zones. If so, should we place any constraints on incumbent LEC zone pricing plans for common line service? For example, must an incumbent LEC demonstrate that such zones are based on cost? If so, how? Should there be a limit on the number or size of such zones? We note, for example, that in the accompanying Order we grant incumbent LECs greater flexibility to deaverage rates for services in the trunking basket, but we require each zone, except the highest-cost zone, to account for at least 15 percent of the incumbent's trunking basket revenues in the study area.⁵⁰²

197. In addition, we seek comment on the procedures by which the Commission might permit incumbent LECs to define common line access charge zones. Should we require parties to submit for prior approval such zone pricing plans in advance of tariff filings, as we initially required for special access and switched transport zone pricing plans?⁵⁰³ If so, what information should we require parties to submit?

198. We also seek comment on whether the use of different zones for unbundled network elements, universal service, and access charges would create inefficiencies and arbitrage opportunities.⁵⁰⁴ We seek comment on alternative approaches for ensuring that the zones for these different purposes are compatible and that geographic zones generally reflect cost differences.⁵⁰⁵

199. *Traffic-sensitive basket.* The traffic-sensitive basket includes local switching, information, data base access services, billing name and address, local switching trunk ports, and signaling transfer point port termination.⁵⁰⁶ In the past, parties have argued that traffic-sensitive service costs vary little, if at all, within study areas.⁵⁰⁷ Furthermore, we are unaware of any state commission that has deaveraged an incumbent LEC's rates for unbundled local switching. We invite parties to submit further evidence regarding the degree to which costs of traffic-sensitive services may vary geographically within incumbent LEC

⁵⁰² See Section V, *supra*. We adopt that requirement to ensure that incumbent LECs cannot define zones that are, for all practical purposes, specific to particular customers.

⁵⁰³ See, e.g., *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7456-57.

⁵⁰⁴ See *Universal Service Seventh Report and Order*, 14 FCC Rcd at 8128-29.

⁵⁰⁵ For example, different geographic zones may work for these purposes so long as the results are not widely disparate in any particular location.

⁵⁰⁶ 47 C.F.R. § 61.42(e)(2).

⁵⁰⁷ See, e.g., MCI Nov. 5 Reply Comments at 31-32, 36-37; Time Warner Oct. 26 Comments at 14.

study areas and whether any such variance warrants permitting incumbent LECs to deaverage traffic-sensitive charges. We seek comment on whether we should establish similar or identical rules concerning any deaveraging of traffic-sensitive elements as we may establish for common line elements. For example, should we establish similar or identical rules regarding the methods and procedures for establishing rate zones for traffic-sensitive services, to the extent that they should differ from common line or transport zones? In Section VIII.C, *infra*, we seek comment on replacing the existing per-minute or per-call local switching rate structure rules with a capacity-based rate structure. How might deaveraging of traffic-sensitive charges be affected by such changes in the switching rate structure?

B. Phase II Pricing Flexibility for Switched Service

200. In this section, we seek comment on Phase II pricing flexibility for common line and traffic-sensitive services, and the traffic-sensitive components of tandem-switched transport services offered by price cap incumbent LECs.⁵⁰⁸ We seek comment on the appropriate triggers for such relief and how Phase II relief for common line and traffic-sensitive services might differ from Phase II relief for dedicated transport and special access services that we establish in the Order accompanying this Notice.⁵⁰⁹

1. Triggers

201. As we discuss in the Order, Phase II relief is warranted when an incumbent LEC demonstrates that competitors have established a significant market presence, *i.e.*, that competition for a particular service within a geographic area is sufficient to preclude the incumbent from exploiting any monopoly power over a sustained period.⁵¹⁰ In the Order, we conclude that an incumbent price cap LEC is entitled to Phase I pricing flexibility for common line and traffic-sensitive services in an MSA when it demonstrates that competitors, in aggregate, offer service over their own facilities to at least 15 percent of incumbent LEC customer locations in the MSA.⁵¹¹ We seek comment on whether we should predicate Phase II relief for these services on a similar showing that competitors offer these services over their own facilities but adopt a threshold higher than 15 percent, and, if so, what this threshold

⁵⁰⁸ As in our discussion of Phase I triggers for common line service, traffic-sensitive service, and traffic-sensitive components of tandem-switched transport service in Section VI.C.3, *supra*, references to "traffic-sensitive service" in this section include the traffic-sensitive components of tandem-switched transport service. The elements of tandem-switched transport are discussed in Section VI.C.3, *supra*. See also 47 C.F.R. § 69.111. We address Phase II pricing flexibility for the dedicated portion of tandem switched transport in Section VI.C.2, *supra*.

⁵⁰⁹ See Section VI.C.5.c, *supra*.

⁵¹⁰ See Section VI.C.5, *supra*.

⁵¹¹ See Section VI.C.3, *supra*.

should be. If a different approach is warranted for Phase II relief, what should the relevant test(s) be?

202. In the Order, we decline to include customer locations served by mobile wireless competitors toward satisfaction of the Phase I trigger, due to the administrative burdens of determining when mobile wireless serves as a substitute for incumbent LEC wireline service.⁵¹² Should we exclude mobile wireless service from the Phase II trigger, as well? Are there reasons to believe that mobile wireless substitution will be easier or more important to measure in the context of requests for Phase II relief?

203. Some parties, such as Bell Atlantic and USTA, have proposed that we allow incumbent LECs to seek pricing flexibility for these services with respect to certain classes of customer, such as multi-line business customers, based on meeting triggers applicable only to a particular class of customers.⁵¹³ We conclude, above, that we should not allow such separate showings for Phase I relief because we wish to encourage competition for both high-volume business customers and residential and low-volume business customers.⁵¹⁴ Should we decline to permit such separate showings for Phase II pricing flexibility for common line and traffic-sensitive services?

2. Relief

204. In the Order, we conclude that an incumbent LEC that qualifies for Phase II relief for dedicated transport and special access services need not comply with Part 69 rate structure rules with respect to these services, may remove these services from price caps, and may file tariffs for these services on one day's notice (so long as such tariffs are made generally available).⁵¹⁵ Should we grant similar Phase II relief for common line and traffic-sensitive service? If not, what relief is warranted upon satisfaction of the Phase II triggers for these services?

205. We also seek comment on whether we should impose certain safeguards with respect to Phase II relief for common line and traffic-sensitive services that we do not impose with respect to dedicated transport and special access services. Currently, incumbent LECs recover some of their common line costs through the SLC, which is assessed directly on the end user. As a condition of granting Phase II relief for common line services, should we require price cap incumbent LECs to charge some or all of the common line charge directly to the end user? If only some of the costs should be charged directly to the end user, on

⁵¹² See *id.*

⁵¹³ Bell Atlantic *ex parte* statement of April 27, 1998, at 27; USTA *ex parte* statement of June 1, 1999, at 2.

⁵¹⁴ See Section VI.C.3, *supra*.

⁵¹⁵ See Section VI.C.4.c, *supra*.

what basis should we establish a limit? What are the advantages and disadvantages of prohibiting some or all common line cost recovery from IXC's? What additional safeguards might we require? For example, should we limit in any way the extent to which incumbent LEC's recover local switching costs from IXC's, as opposed to end users?

206. We also seek comment on the relationship between granting price cap LEC's Phase II pricing flexibility for common line and traffic-sensitive services and their receipt of universal service support with respect to these services. If, for example, a price cap LEC is entitled to universal service support for a line if its costs⁵¹⁶ exceed a particular benchmark, should we prohibit the LEC from charging a rate above that benchmark? Similarly, if eligibility for high cost support were determined on the basis of a revenue benchmark, should common line charges be limited by that benchmark? In what other ways should Phase II pricing flexibility for common line and traffic sensitive-services be affected or limited by universal service concerns?

C. Switching Issues

1. Local Switching

a. Introduction

207. We solicit comment on replacing the existing per-minute or per-call local switching rate structure rules with a capacity-based rate structure.⁵¹⁷ Specifically, should we require price cap LEC's to charge for local switching on the basis of the number of trunks connected to a given end office switch? Below, we seek comment on a capacity-based local switching rate structure. We then consider adding a factor to the traffic-sensitive PCI formula, designed to serve a function similar to the "g" factor in the common line PCI formula, in order to give access customers a reasonable portion of the benefits of demand growth. Finally, we seek comment on whether to require LEC's to decrease their traffic-sensitive PCIs, so that LEC's would not retain the benefits of past demand growth on a going-forward basis.

⁵¹⁶ Cost could be determined in a number of ways, including, but not limited to, costs associated with a particular line or a price cap LEC's average cost per line in a study area. See, e.g., *Universal Service Seventh Report and Order*, 14 FCC Rcd at 8126-30.

⁵¹⁷ We address tandem switching issues later in this Order. We do not consider revising Section 69.125, the rate structure rules for dedicated signalling transport services, or Section 69.129, the rate structure rules for signalling for tandem switching. We reviewed our SS7 signalling rate structure rules in the *Access Reform First Report and Order*, 12 FCC Rcd at 16089-91, and we see no reason to re-open those issues at this time.

b. Background

208. The Commission's long-standing policy is to require, to the extent possible, rate structures to reflect the manner in which carriers incur costs. Inefficient rate structures lead to inefficient and undesirable economic behavior, and create an implicit subsidy between high-volume users and low-volume users.⁵¹⁸ For example, a rate structure that recovers non-traffic-sensitive costs through traffic-sensitive access rates increases the per-minute rates paid by IXCs and long-distance companies, thereby artificially suppressing demand for interstate long-distance services, and requiring high-volume customers to pay charges in excess of the costs of providing their service. Meanwhile, low-volume customers pay rates that are less than the cost of the dedicated equipment.⁵¹⁹

209. The Part 69 rules require incumbent LECs to charge per-minute rates for local switching,⁵²⁰ based on the Commission's 1983 finding that local switching services were traffic-sensitive.⁵²¹ In the *Access Reform First Report and Order*, the Commission recognized that the local switching costs associated with line cards and trunk ports are non-traffic-sensitive,⁵²² and revised the access charge rate structure to require incumbent LECs to recover those costs through non-traffic-sensitive rates.⁵²³ The Commission also concluded that the record at that time was not adequate to determine whether or to what extent the remaining local switching costs were traffic-sensitive or non-traffic-sensitive, and maintained the requirement that LECs recover those costs through traffic-sensitive rates.⁵²⁴ The Commission did, however, revise the local switching rate structure to permit, but not require, incumbent LECs to establish per-call local switching charges, in addition to per-minute rates.⁵²⁵

210. The Commission also considered the nature of switching costs in the *Local Competition Order*, in the context of establishing pricing rules for local switching unbundled

⁵¹⁸ *Access Reform First Report and Order*, 12 FCC Rcd at 15995-96, 15998; Investigation of Interstate Access Tariff Non-Recurring Charges, CC Docket No. 85-166, Phase I, Part 3, 2 FCC Rcd 3498, 3501-02 (1987).

⁵¹⁹ See *Access Reform First Report and Order*, 12 FCC Rcd at 15996, 16008.

⁵²⁰ See, e.g., 47 C.F.R. § 69.106; *Access Charge Order*, 93 FCC 2d at 304 (1983) (*Access Charge Order*).

⁵²¹ *Access Charge Order*, 93 FCC 2d at 304-05.

⁵²² Line cards connect subscriber lines to the switch, and trunk ports connect interoffice trunks to the switch. *Access Reform First Report and Order*, 12 FCC Rcd at 16034.

⁵²³ *Id.* at 16035-36.

⁵²⁴ *Id.* at 16040.

⁵²⁵ *Id.* at 16041-46.

network elements (UNEs). At least one party to that proceeding, the Washington Utilities and Transportation Commission, advocated a rate structure based on peak usage for local switching in 1996, arguing that a flat rate based upon the cost of providing capacity at peak load is possibly the most economically correct pricing mechanism.⁵²⁶ In the *Local Competition Order*, the Commission concluded that shared local switching costs, *i.e.*, local switching costs other than the costs of line cards and trunk ports, could be reasonably recovered through either flat or per-minute rate structures, and permitted state public service commissions to adopt either traffic-sensitive or non-traffic-sensitive rate structures for local switching unbundled network elements (UNEs).⁵²⁷

c. Capacity-based Local Switching Rate Structure

211. If costs are driven by peak demand, as suggested by the Washington Utilities and Transportation Commission, then local switching costs do not vary directly with total switched minutes in most cases. In the *Access Reform First Report and Order*, however, the Commission considered and rejected a proposal to require incumbent LECs to develop peak and off-peak rates for local switching, because the Commission concluded that LECs would have difficulty determining peak and off-peak hours with any degree of certainty, due to geographic, user-type, and service considerations. In addition, charging different prices for calls made during different times of the day may cause customers to shift their calling to less expensive times, thereby resulting in different peak times.⁵²⁸ We know of no reason to revisit our conclusion to reject peak and off-peak rates for local switching. Instead, we consider adopting a capacity-based local switching rate structure. If an increase in total minutes or total number of calls would lead to a measurable increase in local switching costs only when the increase at times of peak demand is so great as to require an expansion of switch capacity, then a capacity-based rate structure may reflect the manner in which incumbent LECs incur local switching costs better than the existing rate structure, without the difficulties raised by determining peak and off-peak hours.

212. A capacity-based local switching rate structure may offer other benefits. Most notably, if IXC's purchased a greater portion of their access services through non-traffic-sensitive rates, they would have an incentive to develop off-peak pricing plans to encourage long distance consumers to make more or longer off-peak calls. This, in turn, would encourage more efficient use of the public switched network. Such pricing plans are also likely to extend a greater share of the benefits of access cost reductions to residential long

⁵²⁶ See Washington Utilities and Transportation Commission Comments in CC Docket No. 96-98, at 29-30, summarized in *Local Competition Order*, 11 FCC Rcd at 15900.

⁵²⁷ *Local Competition Order*, 11 FCC Rcd at 15878-79, 15905.

⁵²⁸ *Access Reform First Report and Order*, 12 FCC Rcd at 16046-47. See also *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5042 (1996).

distance customers, because they are more likely than business customers to be off-peak users.

213. Accordingly, we seek comment on revising Section 69.106(f)(2) of the Commission's Rules to require price cap LECs to develop capacity-based local switching charges rather than per-minute charges. For example, should we require price cap LECs to calculate a capacity-based local switching charge by considering the aggregate number of trunks switched by the LEC? If local switching rates are based on number of trunk-side connections, how should we treat local switching access services with line-side connections, such as Feature Group A?⁵²⁹

214. We also invite comment on the level of detail that we should specify in our local switching rate structure rules. Specifically, should Section 69.106 require incumbent LECs to charge for local switching based on the DS-1 equivalent capacity of an access customer's trunks connected to a particular end office switch, so that the DS-3 charge would be 28 times the DS-1 charge? Should we instead establish some initial rate relationship between DS-1 and DS-3, as the Commission did for transport?⁵³⁰ Is there some other rate structure we could prescribe that would better reflect how local switching costs vary with increases in peak demand that necessitate expansion of switch capacity? Alternatively, should we permit LECs to develop their own capacity-based local switching rate structures, and examine the reasonableness of those structures in the tariff review process?

215. We tentatively conclude that a capacity-based local switching rate structure, if it indeed reflects cost causation, would not artificially disadvantage smaller IXCs in the market for long distance services. As the Commission concluded in its decision to eliminate the unitary rate structure for tandem-switched transport, rules that protect small IXCs in competition with AT&T, or other large IXCs, are unnecessary because the long-distance market is competitive.⁵³¹ We seek comment on this conclusion.

216. In addition, we invite parties to comment on whether permitting volume and term discounts for switched access services, as we propose above, would exacerbate any negative impact for smaller IXCs. We invite comment on whether a resale market for local

⁵²⁹ For purposes of this Order, Feature Group A is line side access to telephone company end office switches with an associated seven digit telephone number for the customer's use in originating communications from and terminating communications to an IXC's interstate service or a customer-provided interstate communications capability. See *Contel of Indiana, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 4298, 4303 n.5 (Com. Car. Bur., 1988) (citing Exchange Carrier Association Tariff F.C.C. No. 1, pp. 157-59).

⁵³⁰ The Commission adopted a presumption of reasonableness for initial transport rates if incumbent LECs developed DS-3 and DS-1 rates with a ratio of 9.6-to-1. See 47 C.F.R. § 69.108, Transport Rate Structure and Pricing, CC Docket No. 91-213, First Reconsideration Order, 8 FCC Rcd 5370 (1993).

⁵³¹ *Access Reform First Report and Order*, 12 FCC Rcd at 16060.

switching services is likely to develop, and whether such a development would mitigate any negative impact that smaller IXCs might face. We note that the Commission already has a policy prohibiting carriers from placing restrictions on resale in their tariffs.⁵³² We invite comment on whether any further resale protection is necessary. Alternatively, we invite comment on whether we should permit or require incumbent LECs to retain existing per-minute or per-call local switching charges concurrently with non-traffic-sensitive charges. Finally, we invite parties to make other proposals.

d. Revision of Traffic-Sensitive PCI Formula

217. In the *LEC Price Cap Order*, the Commission concluded that it needed to adopt a formula for the common line basket PCI different from the PCI formula for the other baskets, to reflect that carrier common line rates are traffic-sensitive even though common line costs are non-traffic-sensitive.⁵³³ Accordingly, the Commission included a "g" factor in the common line PCI formula, where g represents per-minute growth per access line.⁵³⁴ The Commission found that including g would give all the benefits of demand growth to IXCs, while excluding g would give all the benefits of demand growth to LECs.⁵³⁵ The Commission incorporated g/2 as a compromise, because it found that both IXCs and LECs contribute to demand growth.⁵³⁶ The Commission did not attempt to measure at that time the relative contributions to demand growth made by IXCs and LECs, and expressly stated that a 50-50 split was not a precise reflection of the LECs' ability to influence usage.⁵³⁷

218. If we decide to adopt a capacity-based local switching rate structure, it may be appropriate to include a factor in the traffic-sensitive PCI formula similar to the g factor currently in the common line PCI formula. Although, as discussed above, it is possible that a capacity-based local switching rate structure reflects costs better than a per-minute rate

⁵³² Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261 (1976), *cited in, e.g.*, *Metro Communications, Inc., v. Ameritech Mobile Communications, Inc.*, 12 FCC Rcd 13083, 13092 (Wireless Tel. Bur., 1996).

⁵³³ *LEC Price Cap Order*, 5 FCC Rcd at 6793.

⁵³⁴ *Id.* at 6794. The g factor is defined as "the ratio of minutes of use per access line during the base period, to minutes of use per access line during the previous base period, minus 1." See Section 61.45(c)(1) of the Commission's Rules, 47 C.F.R. § 61.45(c)(1).

⁵³⁵ *LEC Price Cap Order*, 5 FCC Rcd at 6794. Setting g at zero would mean that the common line PCI is unaffected by demand growth. In this case, the LEC would keep all the increased revenue resulting from that demand growth. Alternatively, incorporating a "full g" into the common line PCI would require LECs to reduce their common line PCIs to reflect all demand growth. In this case, the IXC would receive all the benefits of demand growth in the form of lower common line rates.

⁵³⁶ *Id.* at 6795.

⁵³⁷ *Id.*

structure, capacity-based rates may not reflect local switching costs perfectly. More specifically, an increase in the number of trunks at a switch may not lead to a proportional increase in local switching costs. Rather, such an increase in trunks may lead to a measurable increase in local switching costs only when the increase of peak demand is so great as to require an expansion of switch capacity. If this is the case, then local switching costs may not vary directly with changes in per-trunk demand. We tentatively conclude that it would not be reasonable to permit incumbent LECs to retain all the benefits of trunk growth if they are not exclusively responsible for encouraging that growth. Accordingly, we invite parties to discuss whether the traffic-sensitive PCI formula should include a "q" factor, similar to the "g" factor in the common line PCI formula, to incorporate growth in number of trunks into the traffic-sensitive PCI formula. We also invite comment on whether to adopt a q factor if we decide not to revise the local switching rate structure as proposed above, or if we permit or require LECs to offer both usage-sensitive and capacity-based local switching rates.

219. We also request comment on the definition of this q factor if we decide to adopt it. For example, should it be based on the change in DS-1 equivalent capacity? Should price cap LECs measure changes in DS-3 equivalent capacity on some basis other than DS-1 equivalents? We intend to base any q factor we adopt on data that price cap LECs currently collect, or data that price cap LECs could collect at little or no additional cost. We therefore invite any party proposing a q factor definition to discuss whether and to what extent its definition would affect price cap LECs' data collection costs.

220. We also invite comment on the relationship between any q factor we add to the traffic-sensitive PCI formula and the g factor in the common line PCI formula. Specifically, the common line PCI formula currently includes "g/2", because the Commission found in the *LEC Price Cap Order* that both LECs and IXCs contribute to demand growth, and that "g/2" gives both IXCs and LECs a reasonable share of the benefits of per-minute demand growth.⁵³⁸ We note that we invite comment below on increasing the g factor in the common line PCI formula from g/2 to a full g.⁵³⁹ We therefore invite comment on whether any q factor we adopt for the traffic-sensitive PCI formula should be consistent the common line g factor, as revised in this proceeding. Alternatively, we invite comment on whether we should base the q factor in the traffic-sensitive basket on a different fraction than the common line g factor, because local switching does not make up all of the traffic-sensitive basket.⁵⁴⁰

⁵³⁸ *Id.*

⁵³⁹ See Section VIII.D.1, *infra*.

⁵⁴⁰ The services other than local switching in the traffic-sensitive basket are: (1) information; (2) database access services; (3) billing name and address (BNA); (4) trunk ports; and (5) signalling transfer point port termination. See Section 61.42(e)(1) of the Commission's Rules, 47 C.F.R. § 61.42(e)(1). These services generate less revenue than local switching. Local switching generally makes up about 2/3 or 3/4 of the revenues associated with the traffic-sensitive basket.

e. Adjustment to Traffic-Sensitive PCIs

221. In the *LEC Price Cap Order*, the Commission concluded that failing to include a "g" factor in the common line PCI formula would not give IXCs any incentive to become more productive through encouraging demand growth.⁵⁴¹ In other words, failure to include "g" would have created an imbalance between the interests of IXC customers and LEC stockholders. This imbalance would have been substantially similar to the imbalance found by the Commission in the 1995 *LEC Price Cap Performance Review Order*. In that Order, the Commission found that it had previously set the X-Factor lower than it intended, due to the inclusion of 1984-85 data in one of the original X-Factor studies.⁵⁴² The Commission observed that LECs were supposed to become more efficient to earn more than would have been permitted under rate-of-return regulation, and ratepayers were to benefit from rates reduced to the level that would provide this challenge.⁵⁴³ The Commission then concluded that some portion of the LECs' earnings were obtained without any productivity improvements, and rates were not as low as the Commission intended.⁵⁴⁴

222. If we find that local switching costs are more appropriately recovered through capacity-based charges, then permitting LECs to charge per-minute local switching rates since LEC price cap regulation was adopted in 1991, without including a q factor in the traffic-sensitive PCI formula, may have created an imbalance between the interests of IXC customers and LEC stockholders, similar to the imbalance found in the *LEC Price Cap Performance Review Order* resulting from the 1984-85 data discussed above.⁵⁴⁵ The existing per-minute rate structure provides the incumbent LEC with more revenue whenever per-minute demand increases, regardless of whether the LEC's costs have increased. This revenue increase results in higher earnings for the LEC, regardless of whether it has become more productive in its provision of local switching. This could explain, at least in part, why overall LEC earnings have increased in recent years, even though the Commission increased the X-Factor in 1995 and 1997. Furthermore, such an imbalance would remain embedded in the incumbent LECs' traffic-sensitive PCIs, regardless of whether we correct it by revising the local switching rate structure or including a q factor in the traffic-sensitive PCI formula on a forward-looking basis. Moreover, using per-minute charges without simultaneously using a q factor may have exacerbated this imbalance. Accordingly, we seek comment on whether to require a one-time downward adjustment of the LECs' traffic-sensitive PCIs to correct for any imbalance on a

⁵⁴¹ *LEC Price Cap Order*, 5 FCC Rcd at 6795.

⁵⁴² *LEC Price Cap Performance Review Order*, 10 FCC Rcd at 9069.

⁵⁴³ *Id.* at 9070.

⁵⁴⁴ *Id.*

⁵⁴⁵ See AT&T *ex parte* statement of Feb. 19, 1999, at 6 (alleging a 45 percent rate of return for all price cap LECs in the traffic-sensitive basket).

going-forward basis, similar to the adjustment required in the *Price Cap Performance Review Order*.⁵⁴⁶ Specifically, price cap LECs were required to reduce their PCIs to the levels that would have resulted had the Commission excluded the 1984 data point in its 1990 X-Factor determination. In this proceeding, we invite comment on whether price cap LECs should be required to reduce their traffic-sensitive PCIs to the levels that would have resulted had the Commission incorporated a q factor in the traffic-sensitive PCI formula that took effect in 1991. Alternatively, we invite comment on basing this PCI adjustment on a more recent year.

2. Tandem-Switched Transport

223. We solicit comment on whether we should revise the rate structure for tandem-switched transport, for the same reasons we consider revising the local switching rate structure discussed above.⁵⁴⁷ We also invite comment on all the issues we discussed in this section above, to the extent that they are relevant to tandem switching. Is tandem-switched transport different from local switching, such that capacity-based tandem switching rates are inappropriate? If capacity-based tandem switching rates are appropriate, how would they be developed? For example, they could be established based on the number of trunks between the IXC POP and the tandem switch.

224. If the tandem switching rate structure should remain usage-based, how could we prevent larger IXCs from maintaining an inadequate number of trunks to the LEC switch, and using tandem switching as inexpensive overflow? Could LECs establish a rate for IXCs that only use tandem-switched transport, and recover a higher rate for overflow from local switching? If so, we recognize that IXCs rely exclusively on tandem switching for certain routes, and so we believe that an overflow rate should be applied only on routes for which an IXC also has trunks to the local switch.

225. In addition, we invite parties to discuss whether we should add a q factor to the trunking basket PCI, if we conclude that tandem switching costs are more appropriately recovered through capacity-based rates. If so, how should that q factor be defined? Parties may also discuss whether we should adjust the trunking basket PCI to reflect that price cap LECs have recovered essentially flat costs through traffic-sensitive rates since LEC price cap regulation took effect in 1991, similar to the traffic-sensitive PCI adjustment we propose above.

⁵⁴⁶ *Price Cap Performance Review Order*, 10 FCC Rcd at 9069-73. See also *Bell Atlantic v. FCC*, 79 F.3d at 1204-05 (affirming *Price Cap Performance Review Order* on this issue).

⁵⁴⁷ See Section VIII.C.1.c, *supra*.

D. Price Cap Issues

1. Common Line Issues

a. G Factor

226. The Commission proposed revisions to the common line formula in the *Price Cap Fourth FNPRM*, which established part of the record for the *Price Cap Fourth Report and Order*.⁵⁴⁸ The Commission decided against revising the common line formula in the *Price Cap Fourth Report and Order*, however, because it expected the common line PCI formula to be eliminated when per-minute CCL charges were eliminated, as a result of rules adopted in the *Access Reform First Report and Order*.⁵⁴⁹ The transition away from per-minute CCL charges, however, is progressing slowly for certain incumbent LECs. Accordingly, we take this opportunity to review some of the common line issues addressed in the *Price Cap Fourth Report and Order*.

227. Above, we explain why the Commission included a "g/2" term in the common line formula when it adopted LEC price cap regulation.⁵⁵⁰ Later, in 1995, the Commission found evidence that IXCs influence per-minute demand growth more than LECs, and considered increasing the g factor to reflect the IXCs' greater contribution to demand growth.⁵⁵¹ The Commission did not revise the common line formula at that time, however, because it found that the separate common line formula could be eliminated completely if it adopted a moving average TFP-based X-Factor. The moving average X-Factor would incorporate the effects of growth into the PCI, and a separate g factor would no longer be necessary.⁵⁵² Although the Commission did not adopt a moving average-based X-Factor in the 1997 *Price Cap Fourth Report and Order*, it nevertheless decided against revising the common line formula, because the Commission expected per-minute CCL rates and the separate common line formula to be phased out relatively quickly as a result of common line

⁵⁴⁸ *Price Cap Fourth FNPRM*, 10 FCC Rcd at 13680-81.

⁵⁴⁹ *Price Cap Fourth Report and Order*, 12 FCC Rcd at 16710 (citing *Access Reform First Report and Order*, 12 FCC Rcd at 16027). In the *Access Reform First Report and Order*, the Commission adopted rules to phase out per-minute CCL charges through imposition of PICCs, and to replace the current common line PCI formula with the formula used for other PCI baskets when per-minute CCL charges are eliminated. *Access Reform First Report and Order*, 12 FCC Rcd at 16027-28).

⁵⁵⁰ Section VIII.C.1.d, *supra*.

⁵⁵¹ *LEC Price Cap Performance Review Order*, 10 FCC Rcd at 9078-80.

⁵⁵² *Id.* at 9079-80.

rule revisions adopted concurrently in the *Access Reform First Report and Order*.⁵⁵³ Our access reform rules have not eliminated per-minute CCL charges for some companies as quickly as the Commission had anticipated. As a result, this issue warrants re-examination. We invite comment on whether the g factor in the common line PCI formula should be increased, and if so, whether it should be increased to a full "g." Increasing the "g" factor would cause the common line PCI to decrease more quickly, which in turn would cause the per-minute CCL rate to decrease more quickly. The g factor would still be eliminated when the CCL is eliminated in the access reform transition. Parties advocating a "g" factor between g/2 and g should specify what fraction of g they believe should be included in the common line PCI formula, and explain their reasons.⁵⁵⁴

b. Reflection of Revised Common Line Rate Structure in Common Line Formula

228. We have determined that as long as the multi-line business PICC exists, to the extent that the ratio of primary residential and single line business lines to non-primary residential and multiline business lines changes, the common line formula may create a windfall or shortfall for some LECs. Accordingly, we seek comment on revising the common line PCI rules to eliminate any such windfall or shortfall.

229. Prior to the *Access Reform First Report and Order*, price cap LECs recovered all their common line revenues through two charges: (1) flat monthly end user common line charges (EUCL), also known as SLCs, imposed on end users; and (2) per-minute CCLCs imposed on IXC.⁵⁵⁵ In the *Access Reform First Report and Order*, the Commission prescribed new flat common line rate elements, called PICCs, to be imposed on IXCs in most cases.⁵⁵⁶ PICC charges were designed to recover some of the revenues formerly recovered through per-minute CCL charges, and to annually increase until the per-minute CCL charge is phased out.⁵⁵⁷

⁵⁵³ *Price Cap Fourth Report and Order*, 12 FCC Rcd at 16709-10; *Access Reform First Report and Order*, 12 FCC Rcd at 16027-28.

⁵⁵⁴ The current rules require price cap LECs to replace the current common line PCI formula with the formula used for other PCI baskets when they eliminate per-minute CCL charges. *Access Reform First Report and Order*, 12 FCC Rcd at 16027-28; Section 61.45(c)(2) of the Commission's Rules, 47 C.F.R. § 61.45(c)(2). We do not contemplate revising the rules to permit or require price cap LECs to use the separate common line PCI formula after they have eliminated per-minute CCL charges.

⁵⁵⁵ See *Access Reform First Report and Order*, 12 FCC Rcd at 16018.

⁵⁵⁶ *Id.* at 16019-26. Incumbent LECs are permitted to impose PICC charges directly on end users that do not select a presubscribed interexchange carrier (PIC). *Id.* at 16019.

⁵⁵⁷ *Id.* at 16023.

230. PICCs on single-line business and primary residential lines were set initially so that the sum of the PICC and SLC applicable to each of these lines was less than the average revenue per line permitted under the price cap rules.⁵⁵⁸ Those PICCs will increase until the sum of the applicable PICC and SLC is equal to the maximum permitted revenue per line.⁵⁵⁹ During the interim, price cap LECs are allowed to recover this shortfall through PICCs on multiline business lines. As a result, during this interim period, single-line business and primary residential lines receive an explicit subsidy from multiline business lines.⁵⁶⁰

231. The growth rate of the amount received through this PICC subsidy ideally should be equivalent to the growth rate of primary residential and single-line business lines. The PICC subsidy, however, will grow too quickly or too slowly whenever the lines giving subsidy, multiline business lines,⁵⁶¹ grow at a different rate than the lines receiving subsidy, single-line business and residential lines. This subsidy increases disproportionately if multiline business lines grow more quickly than single-line business and primary residential lines. This subsidy fails to keep up with line growth if multiline business lines grow less quickly than single-line business and primary residential lines.

232. For example, assume that the average permitted revenue per line in Year 1 is \$6, and that the LEC provides 50 residential lines and 50 multiline business lines. Thus, the LEC is permitted \$300 in revenue for residential lines (50×6), and \$300 in multiline business lines (50×6). Assume also that the caps on SLCs and PICCs permit the LEC to collect \$4 for each residential line, and \$8 for each multiline business line. In this case, residential line charges recover only \$200 in revenue, and so need \$100 in subsidy. Multiline business lines recover \$400 of revenue, and so generate \$100 in subsidy. In this case, there is no windfall or shortfall in subsidy, and the LEC recovers an average of \$6.00 per line. Now assume that, in Year 2, multiline business lines grow from 50 to 70, while residential lines remain at 50, and everything else in Year 1 remains the same. In this case, residential lines still require \$100 in subsidy. The LEC, however, would collect \$560 in revenue from each multiline business line (70×8). As a result, multiline business charges generate \$160 in subsidy. Because the LEC's residential lines require only \$100 in subsidy, the LEC receives a windfall of \$60 in this example, and would recover an average of \$6.33 per line. Thus, under our current rules,

⁵⁵⁸ *Id.* at 16020-21.

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.* at 16022. In some study areas, some or all of the non-primary residential PICC may also subsidize primary residential lines, depending, among other things, upon the relationship of the carrier common line revenues per line and the cap on the non-primary residential SLC. In addition, if PICCs on multiline business lines still do not enable a price cap LEC to recover all its permitted common line revenue, the LEC may recover those residual revenues through per-minute CCL charges assessed on originating minutes. *Id.*

⁵⁶¹ As discussed above, non-primary residential lines also provide subsidy in some cases, and so the growth rate of non-primary residential lines also affects this subsidy.

when calculating common line permitted revenue for the following year, the incumbent LEC would base those calculations on \$6.33 per line rather than \$6.00 per line.

233. If we permitted common line revenues to increase with the average growth rate of all common lines, we would eliminate the windfall or shortfall that now occurs whenever multiline business lines grow faster or slower than primary residential and single-line business lines. Accordingly, we invite comment on revising the formula in Section 61.46(d)(1) so that permitted common line revenues increase with the average growth rate of all common lines. We also invite interested parties to propose specific revisions to this formula. Finally, we solicit comment on whether any disproportionate increase or decrease in common line subsidy has created an imbalance between ratepayer and stockholder interests, of the kind we discussed at length in the *LEC Price Cap Performance Review Order*⁵⁶² and in this Section of this Order. If so, should we require price cap LECs to make exogenous adjustments to their common line PCIs to correct this imbalance on a going-forward basis?

2. Reorganization of Baskets and Bands

234. In the *Access Reform First Report and Order*, the Commission revised the local switching rate structure to require LECs to charge flat charges for dedicated trunk ports.⁵⁶³ Price cap LECs established these new rate elements in tariffs that took effect on January 1, 1998. Because of the relative levels of demand for trunk ports and local switching, a price cap LEC could, in subsequent tariff filings, reduce its flat trunk port charges substantially, and make up that revenue through a relatively small increase in its per-minute local switching charge. Some price cap LECs did in fact reduce their recently-created flat trunk port charges substantially in their 1998 annual access filings, and some carriers have eliminated those charges in some study areas in their 1999 annual access filings.⁵⁶⁴ We invite comment on whether we should modify our price cap rules to place flat charges and traffic-sensitive charges in separate baskets, to prevent LECs from eliminating their existing flat trunk port charges, and thereby circumventing the local switching rate structure rules we adopted in the *Access Reform First Report and Order*. In addition, we invite parties to propose specific services to be included in each basket, if we decide that any modifications to the basket configurations are warranted. Alternatively, we invite comment on whether adopting a capacity-based local switching rate structure would be sufficient to preclude LECs from entirely circumventing the local switching rate structure rules adopted in the *Access Reform First Report and Order*.

⁵⁶² *LEC Price Cap Performance Review Order*, 10 FCC Rcd at 9069-70.

⁵⁶³ *Access Reform First Report and Order*, 12 FCC Rcd at 16035-36.

⁵⁶⁴ Sprint eliminated its trunk port charges in its Arizona study area, and GTE eliminated these charges in its Northern California, Montana, and Minnesota study areas.

3. Inflation Measure

235. Currently, the inflation measure in the PCI formula is the "Fixed Weight Price Index for Gross Domestic Product, 1987 Weights."⁵⁶⁵ The Bureau of Labor Statistics (BLS) now measures inflation with a chain-weighted GDP-PI, which bases weights for the current year's index on the prior year. We also note that the Commission used chain-weighted price indices in its calculation of a new X-Factor based on total factor productivity.⁵⁶⁶ We tentatively conclude that we should make the inflation measure in the PCI formula consistent with BLS's measure and with that used in setting the X-Factor. We seek comment on this tentative conclusion.

E. CLEC Access Charges

1. Background

236. As we discuss above,⁵⁶⁷ the Commission requested comment in the *Access Reform NPRM* on the regulation of terminating access charges of both incumbent LECs and CLECs. The Commission noted that, with originating access, the calling party has the choice of service provider, the decision to place a call, and the ultimate obligation to pay for the call.⁵⁶⁸ The calling party also is the customer of the IXC that purchases the originating access service.⁵⁶⁹ The Commission noted that, unlike originating access, the choice of an access provider for terminating access is made by the recipient of the call. It suggested that, because neither the originating caller nor its long-distance service provider can exert substantial influence over the called party's choice of terminating access provider, the terminating end of a long-distance call may remain a bottleneck, controlled by the LEC providing access to a particular customer. The Commission also sought comment on the continued treatment of incumbent LEC originating "open end" minutes as terminating minutes for access charge purposes, and whether to extend that approach to CLECs.⁵⁷⁰ The Commission noted that, in

⁵⁶⁵ Section 61.3(q) of the Commission's Rules, 47 C.F.R. § 61.3(q).

⁵⁶⁶ See, e.g., *Price Cap Fourth Report and Order*, 12 FCC Rcd at 16784 (App. D).

⁵⁶⁷ See Section VII.A, *supra*.

⁵⁶⁸ *Access Reform NPRM*, 11 FCC Rcd at 21472.

⁵⁶⁹ *Id.*

⁵⁷⁰ See *id.* at 21477. "The term open end of a call describes the origination or termination portion of a call that utilizes exchange carrier common line plant (a call can have no, one, or two open ends)." 47 C.F.R. § 69.105(b)(1)(ii).

some cases, such as 800 and 888 service, the called party, which pays for the call, is unable to influence the calling party's choice of provider for originating access services.⁵⁷¹

237. Based on the record submitted in response to the *Access Reform NPRM*, the Commission concluded that non-incumbent LECs should be treated as non-dominant in the provision of terminating access.⁵⁷² The Commission found that there was insufficient evidence in the record to determine that CLECs had the ability to exercise market power in the provision of terminating access.⁵⁷³ The Commission further concluded that, as CLECs attempt to expand their market presence, the rates of incumbent LECs or other potential competitors would constrain the CLECs' terminating access rates.⁵⁷⁴ The Commission decided, therefore, not to adopt any regulations at that time governing the provision of terminating access provided by CLECs because CLECs did not appear to possess market power.⁵⁷⁵ The Commission indicated, however, that it would revisit the issue if there were sufficient indications that CLECs were imposing unreasonable terminating access charges.⁵⁷⁶ Although the Commission did not address the issue of CLEC originating access, it indicated, in the context of incumbent LEC originating access, that it believed that new entrants would eventually exert downward pressure on originating access rates.⁵⁷⁷ The Commission also concluded that the continued treatment of "open end" originating minutes, such as those for 800 or 888 services, as terminating minutes for access charge purposes was appropriate because the called party, which pays for the 800 or 888 calls, has limited ability to influence the calling party's choice of access provider.⁵⁷⁸

⁵⁷¹ See *id.*

⁵⁷² See *Access Reform First Report and Order*, 12 FCC Rcd at 16140; see also Section VII.A, *supra* for a definition of non-dominant carrier and a detailed discussion of the Commission's conclusions.

⁵⁷³ See *Access Reform First Report and Order*, 12 FCC Rcd at 16140; see also Section VII.A. *supra*.

⁵⁷⁴ See *Access Reform First Report and Order*, 12 FCC Rcd at 16140; see also Section VII.A. *supra*.

⁵⁷⁵ See *Access Reform First Report and Order*, 12 FCC Rcd at 16141-42; see also Section VII.A, *supra*.

⁵⁷⁶ See *Access Reform First Report and Order*, 12 FCC Rcd at 16140 (noting that CLEC terminating access rates exceeding originating rates in the same market may suggest the need to revisit the regulatory approach; similarly, CLEC rates that exceed incumbent LEC terminating rates in the same market may suggest that a CLEC's terminating access rates are excessive).

⁵⁷⁷ The Commission concluded that new entrants, by purchasing unbundled network elements or providing facilities-based competition, eventually will exert downward pressure on incumbent LEC originating access rates. *Id.* at 16135-36.

⁵⁷⁸ *Id.* at 16140. The Commission noted that incumbent LEC access charges for "open end" minutes would be governed by the same requirements applicable to terminating access provided by incumbent LECs. *Id.* at 16142. In order to address the potential that incumbent LECs might charge unreasonable rates for terminating access, the Commission limited the price cap incumbent LEC recovery of TIC and common costs from

238. Since that time, however, we have received indications that the Commission may have overestimated the ability of the marketplace to constrain CLEC access rates. In particular, IXCs allege that a substantial number of CLECs impose switched access charges that are significantly higher than those charged by the incumbent LECs with which they compete,⁵⁷⁹ suggesting that the Commission may need to revisit the issue of CLEC access rates. If market forces fail to constrain CLEC access rates, requiring IXCs to pay access charges set unilaterally by CLECs is not economically efficient and does not further the goals of the Telecommunications Act of 1996. We are reluctant, however, to regulate rates charged by competitive entrants to the local exchange and exchange access markets and prefer instead to seek a marketplace solution that might constrain CLEC access rates.

2. Discussion

239. Throughout the *Access Reform* proceeding, the Commission has questioned whether CLECs possess market power over terminating access service and whether such power precludes market forces from ensuring that terminating access charges are just and reasonable. In the *Access Reform NPRM*, the Commission invited parties to comment on whether CLECs have market power over IXCs that need to terminate long-distance calls to CLEC customers, and, if so, whether the Commission should subject CLEC terminating access rates to some form of regulation.⁵⁸⁰ Given the rapidly evolving telecommunications industry, we again invite parties to comment on this issue.

240. In particular, in response to the *Access Reform NPRM*, USTA challenges the fundamental premise that, because the called party is not paying for the call, terminating access charges are shielded from downward market pressures.⁵⁸¹ According to USTA, if a LEC overprices terminating access relative to originating access, a pair of callers in repeated communications would have an incentive to alter their pattern of calls to favor the lower-priced alternative.⁵⁸² In the *Access Reform First Report and Order*, the Commission

terminating access rates for a limited period with the eventual elimination of any recovery of common line and TIC costs through terminating access charges. *Id.*

⁵⁷⁹ *AT&T Declaratory Ruling Petition*, Appendix A (alleging that a number of CLECs impose charges that are in some cases more than twenty times higher than those charged by incumbent LECs with which they compete); see also Sprint Reply at 3; Cable & Wireless Comments at 2. Unless otherwise indicated, all citations to comments and replies in this section of the Notice refer to comments and replies submitted in response to the *AT&T Declaratory Ruling Petition*.

⁵⁸⁰ See *Access Reform NPRM*, 11 FCC Rcd at 21476.

⁵⁸¹ USTA *Access Reform NPRM* Comments, Attachment 3 at 12.

⁵⁸² *Id.*; see also TCI *Access Reform NPRM* Reply at 32 (the Commission's analysis of a calling party's incentives does not consider the incentives that called parties have because of the value they place on receiving calls as well as originating them).

stated that it was not convinced that a significant competitive impact would result from changes in calling patterns between pairs of callers.⁵⁸³ Based on their experiences since the *Access Reform First Report and Order*, we ask parties to comment on USTA's hypothesis. In addition, in response to the *Access Reform NPRM*, TCI disputes the premise that CLECs may possess market power. TCI asserts that CLECs do not have market power because IXCs can exercise bargaining power in negotiating terminating access charges with CLECs.⁵⁸⁴ TCI argues that the absence of an agreement will not prevent an IXC from completing many calls; instead, the IXC simply will have to pay terminating access to a different carrier.⁵⁸⁵ The absence of an agreement would be very costly to a CLEC, however, because it is quite possible that switched local service would not be a viable business without interconnection agreements with all the major IXCs.⁵⁸⁶ We ask parties to comment on TCI's hypothesis.

241. TCI's comments also raise the fundamental question of an IXC's obligation to accept or deliver traffic from or to a LEC. The Bureau recently released an order in which it found that AT&T had failed to take reasonable and necessary steps to terminate its access service arrangement with MGC, a CLEC.⁵⁸⁷ The Bureau also found, however, that MGC had failed to identify a legal impediment to an IXC declining to purchase a particular LEC's access service,⁵⁸⁸ but it emphasized that its holding was limited to the specific factual record⁵⁸⁹ and the arguments raised by the parties.⁵⁹⁰ The Bureau stated that:

by holding that none of the obligations we discuss above prevents AT&T from declining MGC's originating access service, we do not imply that AT&T is entirely without constraint in determining where, how, or whom it will provide its long distance services. Naturally, in providing those

⁵⁸³ *Access Reform First Report and Order*, 12 FCC Rcd at 16136.

⁵⁸⁴ Although TCI's point is limited to terminating access charges, presumably it also could apply to originating access charges.

⁵⁸⁵ TCI *Access Reform NPRM* Reply, Attachment A at 8.

⁵⁸⁶ *Id.* TCI appears to assume that an IXC is not obligated to deliver traffic to a terminating access provider if the IXC believes the rates are too high. We note that this issue is raised by AT&T's Declaratory Ruling Petition that we denied in this Order and addressed in the Bureau's decision in *MGC Communications*.

⁵⁸⁷ *MGC Communications* at ¶ 16.

⁵⁸⁸ *Id.* at ¶ 8.

⁵⁸⁹ At the hearing, MGC appeared to concede that, under its tariff, an IXC prospectively may refuse to accept a LEC's originating access traffic. *MGC Communications* at ¶ 8. MGC also argued, however, that the equal access, dialing parity, and payphone provisions of the Act obligate IXCs to accept CLEC traffic. *Id.* The Bureau rejected these arguments. *Id.* at ¶ 12.

⁵⁹⁰ *Id.* at ¶ 12.

services, AT&T remains subject to a broad variety of statutory and regulatory constraints that are too numerous to list here, but which include, without limitations, sections 201, 202, 203, and 214 of the Act and section 63.71 of the Commission's rules.⁵⁹¹

242. We now solicit comment on the issue the Bureau explicitly did not reach: whether any statutory or regulatory constraints prevent an IXC from declining a CLEC's access service. Commenters should identify any such constraints with particularity. If there are circumstances in which an IXC may decline to purchase a CLEC's access service, what are the ramifications for the customer of the CLEC? How would such a customer make or receive long-distance calls? Is such a regime consistent with the goals of section 254 of the Act that consumers in all regions of the nation have access to telecommunications services, including interexchange services?⁵⁹² Provided that an IXC may refuse a CLEC's access traffic, is this a market-based solution to excessive CLEC rates that obviates the need for any regulatory action by the Commission?

243. If an IXC may refuse a CLEC's access service, we also solicit comment on whether an IXC can refuse to accept traffic from an incumbent LEC when there are no competitive alternatives to the LEC, *e.g.*, a rural area with only one local exchange provider.⁵⁹³ We note that the Commission regulates incumbent LEC access charges.⁵⁹⁴ If an incumbent LEC's rates are within the Commission's mandates, should they be presumed to be just and reasonable? If so, should an IXC be allowed to refuse an incumbent LEC's access service despite the fact that the LEC's access rates are just and reasonable? What are the ramifications for the customer in that case? If there are no competitive alternatives, how would the end user of the LEC receive long-distance service if the IXC refused the LEC's access service? If in fact an IXC may refuse a LEC's access service, we also solicit comment on whether an IXC can accept traffic from incumbent LECs but refuse to accept traffic from CLECs. What are the ramifications for both the end users of the CLEC and the incumbent LEC? Would this lead to confusion on the part of the calling party who would not be aware until it placed its call, and the call did not go through, that the called party was served by a CLEC? Should an IXC's obligations to accept or deliver traffic from or to a CLEC differ for originating and terminating access services?

⁵⁹¹ *Id.* See also 47 U.S.C. §§ 201, 202, 203, and 214; 47 C.F.R. § 63.71 (establishing procedures for discontinuance or impairment of service by domestic, non-dominant carriers).

⁵⁹² 47 U.S.C. § 254(b)(3).

⁵⁹³ We note that AT&T did not address the issue of incumbent LEC access services. *AT&T Declaratory Ruling Petition* at n.4.

⁵⁹⁴ See *Access Reform First Report and Order*, 12 FCC Rcd at 16135-38.

244. We acknowledge that CLEC access rates may, in fact, be higher due to the CLECs' high start-up costs for building new networks, their small geographical service areas, and the limited number of subscribers over which CLECs can distribute costs.⁵⁹⁵ Requiring IXCs to bear these costs, however, may impose unfair burdens on IXC customers that pay rates reflecting these CLEC costs even though the IXC customers may not subscribe to the CLEC. IXCs currently spread their access costs among all their end users. We solicit comments on solutions to this problem. Might the problem of excessive CLEC access rates be solved if IXCs charged different rates to end users *within the same geographic area* based upon the level of access charges levied by the end user's local exchange company? Because their long-distance bills would fluctuate based on the level of access charges, end users presumably would switch to LECs that charged lower access charges in order to reduce their long-distance bills. Is this a market-based solution to the issue of CLEC access rates?

245. If it is a market-based solution, we solicit comments on whether section 254(g) permits IXCs to charge different rates to end users *within the same geographic area* based upon the level of access charges levied by the end user's local exchange company.⁵⁹⁶ The legislative history of section 254(g) indicates that it is intended to ensure that rates *between geographic areas* are equal.⁵⁹⁷ If section 254(g) permits IXCs to charge different rates to end users *within the same geographic area* based upon the level of access charges levied by the end user's local exchange company, what practical difficulties might that raise with respect to ensuring that urban and rural rates are comparable? How, for example, might one compare urban and rural rates if IXCs charge different rates within an urban area?

246. We also seek comment on whether mandatory detariffing of CLEC interstate access charges might address any market failure to constrain terminating access rates. Mandatory detariffing would eliminate the CLECs' ability unilaterally to set terminating access rates by filing a tariff and to avoid negotiating those rates in the marketplace by

⁵⁹⁵ See, e.g., Cox Comments at 5 (a CLEC that primarily serves residential customers will have a low volume of access traffic (and hence higher per minute costs) relative to a CLEC of equal size that primarily serves businesses); OpTel Comments at 5 (CLECs' higher access rates often reflect the higher cost structure of a facilities-based CLEC in the process of building a new network relative to the cost structure of an incumbent LEC with an established network).

⁵⁹⁶ See 47 U.S.C. § 254(g) (The Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State); see also 47 C.F.R. § 64.1801.

⁵⁹⁷ In the Joint Explanatory Statement, the conferees stated that: "[n]ew section 254(g) is intended to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers." S. Rep. No. 230, 104th Cong., 2nd Sess. at 132 (1996) (Joint Explanatory Statement).

relying on the filed tariff doctrine.⁵⁹⁸ To the extent that detariffing encourages parties to negotiate rates for terminating access, is it a market-based solution to excessive terminating access charges? We note, however, that our decision to require mandatory detariffing by IXC's has been stayed by the court of appeals,⁵⁹⁹ and the court's ultimate decision likely will implicate our ability to impose mandatory detariffing on CLEC's. Finally, we seek comment on whether the adoption of any other solution should serve only as a "stopgap" measure until such time as we may be able to require detariffing.

247. We strongly prefer to rely upon a marketplace solution, such as those discussed above, to constrain CLEC access rates. Nonetheless, in the event that we conclude that legal or other impediments preclude adoption of a market-based solution, we also seek comment on a regulatory backstop to constrain CLEC access rates. In the *Access Reform NPRM*, the Commission invited parties to address whether the incumbent LEC's terminating access charges should serve as a benchmark to evaluate the reasonableness of CLEC's terminating rates. It suggested that a CLEC's terminating access charges might be presumptively just and reasonable if they were less than or equal to the terminating access charges of the incumbent LEC with which the CLEC competes.⁶⁰⁰ If, on the other hand, the CLEC's terminating access charges exceed the incumbent LEC's charges, the CLEC could be required to provide cost support for its charges or, alternatively, it might be required to collect the difference from its end users, rather than IXCs.⁶⁰¹ We again seek comment on these proposals and whether they also should apply to originating access rates. Should access rates below a particular benchmark be presumed just and reasonable, thus providing CLEC's with a defense in the context of a section 208 complaint?⁶⁰² We seek comment on what rates to use as a benchmark, e.g., the incumbent LEC rate in the area served by the CLEC, or some other terminating access rate.⁶⁰³

⁵⁹⁸ In its declaratory ruling petition, AT&T alleges that its attempts to negotiate terminating access charges have stalled because many CLEC's take the position that, due to the "filed tariff doctrine," AT&T is obligated to accept services from the CLEC at prices chosen by the CLEC. *AT&T Declaratory Ruling Petition* at 3, n. 2; see Section VII.B. for a discussion of the filed tariff doctrine.

⁵⁹⁹ See Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20741-43 (1996) (*Tariff Forbearance Order*), stay granted, MCI Telecommunications Corp. v. FCC, No. 96-1459 (D.C. Cir. filed Feb. 13, 1997).

⁶⁰⁰ *Access Reform NPRM*, 11 FCC Rcd at 21476.

⁶⁰¹ *Id.*

⁶⁰² 47 U.S.C. § 208.

⁶⁰³ Commenters provide a number of suggestions on what rate to use as a benchmark. For example, Cox asserts that, if the Commission is going to use a benchmark, it should use the rates of smaller, more geographically dispersed non-price cap incumbent LEC's, such as the incumbent LEC's participating in the NECA tariff. Cox *Access Reform NPRM* Comments at 6. Although MCI does not believe that the interstate access rates charged by NECA member companies are just and reasonable, it suggests that NECA rates levels may be a

248. We also seek comment on whether any benchmark should vary depending on various criteria, such as, for example, whether the CLEC serves high cost areas or low cost areas. Alternatively, should any benchmark take the form of a sliding scale that declines as the number of access minutes per CLEC switch increases? Would it be appropriate to estimate this benchmark using incumbent LEC data? If parties believe that the benchmark should vary depending on various criteria, we solicit comment on these criteria, on what methodology we should use to establish alternative benchmarks, and what criteria we should use to determine which benchmark should apply to an individual CLEC.

249. Assuming we were to employ some form of a benchmark, we seek comment on whether to provide an "escape valve" that would allow CLECs wishing to charge more than the benchmark to collect those charges from end users (either the called party or calling party).⁶⁰⁴ In particular, we seek comment on an "end party pays" proposal that would require CLECs to collect the difference between the benchmark terminating access rate and the CLEC terminating access rate from end users (either the calling or called party) rather than from the IXC.⁶⁰⁵ We note that this "end party pays proposal" would resolve the problems associated with IXC averaging requirements,⁶⁰⁶ by in essence, "deaveraging" terminating access by charging the end user, rather than the IXC, for the terminating access.

250. In particular, if the *called* party pays, the person receiving the call would be charged the difference between the CLEC terminating access rate and the benchmark terminating access rate. We ask parties to comment on whether charging the called party would yield an increase in the number of uncompleted calls due to the called parties' refusal to accept the charges. In the *Access Reform First Report and Order*, the Commission found that a "called party pays" proposal may be disruptive to wireline services.⁶⁰⁷ Given the

useful starting point in setting a benchmark because they are supposed to be set at a level equal to the national averaged rate had all incumbent LECs remained in the NECA pool. MCI Access Reform NPRM Reply Comments at 6 and n.24. Sprint states that, although it has no objection to paying NECA level terminating access charges to CLECs that serve high costs areas also served by NECA carriers, there is no justification for using NECA rates as a benchmark for CLEC rates in the low cost high-density metropolitan areas. Sprint Access Reform NPRM Reply Comments at 7.

⁶⁰⁴ See, e.g., *Access Reform NPRM*, 11 FCC Rcd at 21476.

⁶⁰⁵ See, e.g., *id.*

⁶⁰⁶ See Section VII.A. *supra* for a discussion of IXC averaging requirements.

⁶⁰⁷ See *Access Reform First Report and Order*, 12 FCC Rcd at 16138. We note that, in response to the Access Reform NPRM, the California Commission indicated that it opposed any "called party pays" proposal because customers most likely would not understand why they were paying to receive a call and some customers would refuse to accept calls if they knew that doing so would mean incurring a charge. California Commission *Access Reform NPRM* Comments at 18.

increasing popularity of wireless services and that most wireless companies charge the called parties for receiving calls, we seek comment on the continued validity of the Commission's concerns that consumers would be adverse to a "called party pays" proposal in the context of wireline services. In addition, we invite parties to address how to accomplish charging the customer receiving the call for terminating access.

251. If, conversely, the calling party pays, the person making the call, rather than the IXC, would be charged the difference between the CLEC terminating access rate and the benchmark terminating access rate. We seek comment on whether wireline consumers would be adverse to a "calling party pays" regime. We note that such a regime is offered widely by wireless providers abroad, and on a much more limited basis by some providers of cellular, paging and Personal Communications Service (PCS) in the United States.⁶⁰⁸ Further, we seek comment on whether requiring called or calling parties to pay for a portion of terminating access might encourage competition for terminating access. In addition, we question whether these "end party pays" proposals should be limited only to CLECs, and if so, whether this would result in confusion on the part of end users, *i.e.*, incumbent LEC end users would not be charged for terminating access but CLEC end users would be.

252. Adoption of a "calling party pays" regime would require notification to the party making the call that it would be responsible for terminating access charges in addition to a long distance charge from its IXC. We seek comment on the development of a notification system. In particular, we seek comment on a proposal that the notification be developed in cooperation with the States and include: (1) notice that the calling party will be responsible for the terminating access charges; (2) the terminating access rates that the calling party incurs will be charged by the terminating LEC provider; and (3) notice that the calling party may terminate the call prior to incurring any charges. If we were to adopt a "called party pays" proposal, the *called party* would be notified at the time it signed up for service from a CLEC that it would have to pay terminating access charges for incoming long-distance calls. Accordingly, for the "called party pays proposal," we seek comment on the development of a more limited notification that merely delineates local calls from "called party pays" calls.

253. In response to *AT&T's Declaratory Ruling Petition*, Bell Atlantic proposes that the Commission link the terminating access rates of all local carriers, both CLECs and

⁶⁰⁸ See *Access Reform NPRM*, 11 FCC Rcd at 21474. In the context of wireless services, the Commission recently adopted a declaratory ruling that clarified that calling party pays, a service whereby the party placing the call to a wireless customer pays the wireless airtime charges, is a commercial mobile radio service offering. See *Calling Party Pays Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 97-207, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137 (rel. July 7, 1999). In the same proceeding, the Commission also initiated a rulemaking requesting comments on a uniform notification requirement, the effect of competitive pressures on calling party pays rates, and whether it could and should require LECs to bill and collect for a CMRS carrier's calling party service. See *id.*